

## **04-8990 HOUSE V. BELL**

DECISION BELOW: 386 F3d 668

LOWER COURT CASE NUMBER: 00-6136

### **QUESTION PRESENTED:**

Petitioner Paul House's compelling new evidence of innocence sharply split the full en banc Sixth Circuit Court of Appeal. A bare majority of eight judges determined that he presented a colorable claim of innocence, but not a sufficiently strong one that allowed either for review of his underlying constitutional claims. pursuant to *Schlup v. Delo*, 513 U.S. 298 (1995) or his free-standing innocence claim pursuant to *Herrera v. Collins*, 503 U.S. 390 (1993). Six dissenters determined that House's new evidence of innocence was so persuasive and compelling that it easily satisfied *Schlup*, met Justice White's demanding innocence standard in *Herrera*, and warranted his immediate release from prison. The seventh dissenter argued that the new evidence was sufficient to warrant habeas relief and a new trial where a jury could consider all the evidence. Two questions arise from this outcome that warrant this Court's review:

1. Did the majority below err in applying this Court's decision in *Schlup v. Delo* to hold that Petitioner's compelling new evidence, though presenting at the very least a colorable claim of actual innocence, was as a matter of law insufficient to excuse his failure to present that evidence before the state courts -- merely because he had failed to negate each and every item of circumstantial evidence that had been offered against him at the original trial?
2. What constitutes a "truly persuasive showing of actual innocence" pursuant to *Herrera v. Collins* sufficient to warrant freestanding habeas relief?

CERT. GRANTED 6/28/2005